

WILLIAMSBURG BOARD OF ZONING APPEALS MINUTES

October 5, 2004

The regular meeting of the Williamsburg Board of Zoning Appeals was held on Tuesday, October 5, 2004 at 3:00 p.m. in the Williamsburg Municipal Building, 401 Lafayette Street.

ATTENDANCE

Present were Board members Knudson, Kafes, and White. Mr. Carr arrived late. Absent was Board member Lamson. Staff members present were Zoning Administrator Murphy and Secretary Scott. Christina Workman, assistant city attorney was also present.

CALL TO ORDER and MINUTES

Chairman Knudson called the meeting to order. The minutes of the September 7, 2004 meeting were approved as corrected.

PUBLIC HEARINGS – None

NEW BUSINESS

Update from the City Attorney's office on the recent Supreme Court decision concerning variances.

Assistant City Attorney Christina Workman presented the City Attorney's opinion on the recent Virginia Supreme Court decision regarding variances and noted that she is present today only to offer the opinion and not as the attorney for the BZA. She said there is no new law expressed in the decision, that it is an attempt to clarify the definition of what constitutes a "hardship." The key seems to be that if there is an alternative to the proposal, an unreasonable hardship probably does not exist. She said that although the Board would not be prevented from granting the variance, careful consideration needs to be given to the elements of each case in light of the "unreasonable hardship" clause.

Mr. Kafes said his understanding of the Supreme Court's decision is that the Court has determined that Boards of Zoning Appeals have strayed from the Zoning Ordinance's requirements for the grant of a "variance" and need to more strictly follow the legal grounds for granting them.

[Board member Carr arrived.]

Mrs. Knudson suggested that given what she has just heard, maybe the City Zoning Ordinance needs to be changed. Ms. Workman noted the City's Zoning Ordinance reflects State Code on Board of Zoning Appeals. She added that when the General Assembly meets in January, she has no doubt that the Court's

decision will be discussed at that time. After presenting the Attorney's Office opinion, Ms. Workman left the meeting.

OLD BUSINESS

The following case was tabled from last month's meeting and is continued today:

BZA #04-006: Request of Trinh & Joseph Murphy for a variance from Section 21-256.7 of the Zoning Ordinance to construct a single-family dwelling 15 feet from the front property line instead of 25 feet as currently required by the Zoning Ordinance. The property is located at 434 South Henry Street, Williamsburg Tax Map Number 495-(0A)-00-057 and is zoned Limited Business Residential District LB-3. Denied.

The Board discussed the above-noted case in relation to the Supreme Court decision and the City Attorney's opinion. The narrow scope of authority the Board of Zoning Appeals has was pointed out. Mr. Kafes moved the following resolution:

WHEREAS, **Joseph & Trinh Murphy** have submitted application **BZA #04-006** requesting a variance from Section 21-256.7 of the Zoning Ordinance to reduce the front yard setback from 25 feet to 15 feet for a proposed dwelling; and

WHEREAS, the property is located at 434 South Henry Street, Williamsburg Tax Map Number 495-(0A)-00-057 and is zoned Limited Business Residential District LB-3; and

WHEREAS, the City of Williamsburg Board of Zoning Appeals conducted a public hearing on this request on September 7, 2004 which was continued to the October 5, 2004 meeting; and

WHEREAS, after careful consideration of the pertinent issues subsequent to the public hearing, the Board has determined that a variance cannot be authorized because the Board does not find that the request complies with all the criteria contained in Section 21-97:

1. The strict application of this chapter would not produce an undue hardship because the property is capable of residential development without need of a variance.
2. That such hardship is shared generally by other properties in the same zoning district and the same vicinity as required by City Zoning Ordinance.
3. The condition or situation of the property concerned is of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation.

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NOW, THEREFORE, BE IT RESOLVED, by the City of Williamsburg Board of Zoning Appeals on this the 5th day of October 2004, that the request of Joseph and Trinh Murphy for a variance from the 25 foot front yard requirement of the Zoning Ordinance to 15 feet, **is hereby denied**.

Mr. Carr seconded the motion which carried by a vote of 4-0.

Recorded vote on the motion:

Aye: White, Knudson, Kafes, Carr
No: None
Absent: Lamson

Mrs. White and Mrs. Knudson agreed that because the new house proposed would be better than the one currently there, certain city setback requirements need to be reviewed.

NEW BUSINESS

OTHER - none

There being no further business the meeting adjourned at 3:45 p.m.

Respectfully submitted,

Judith Knudson, Chairman
Board of Zoning Appeals